

# **2003 Report on the State Bar of California Discipline System**



**The State Bar of California**

**April 2004**

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## **INTRODUCTION**

The State Bar of California (State Bar) has been in existence since 1927 as a non-profit public corporation and as the administrative arm of the California Supreme Court in matters involving the admission, regulation and discipline of attorneys.

The State Bar is an integrated bar: all lawyers practicing in California must be active members. As of December 31, 2003, the number of active attorneys in California is almost 150,000 making the State Bar the largest integrated state bar in the nation.

The State Bar is governed by a Board of Governors, which consists of 22 members and the President of the State Bar. Fifteen are lawyers elected by members of the State Bar. A 16<sup>th</sup> lawyer is elected by the Board of Directors of the California Young Lawyers Association (CYLA).

Since 1977, the State Bar has operated with increased involvement by the public. Beginning that year, six "public," non-lawyer members were appointed to the Board of Governors - four by California's Governor one by the state Senate Committee on Rules and one by the Speaker of the Assembly.

One of the most important functions of the State Bar is to protect the public, courts and the legal profession from lawyers who fail to adhere to their professional responsibilities. As the following pages address in more detail, the units of the State Bar that contribute to the important function of discipline or, more broadly, public protection are:

**Office of the Chief Trial Counsel (OCTC):** OCTC is responsible for the receipt, investigation, and prosecution of complaints against California attorneys.

**State Bar Court (SBC):** SBC serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys.

**Client Security Fund (CSF):** CSF reimburses victims for losses due to attorney theft or acts equivalent to theft.

**Mandatory Fee Arbitration:** The State Bar administers a statewide program for the arbitration of fee disputes between attorneys and their clients.

**Professional Competence:** The Professional Competence program assists the State Bar's ongoing efforts to improve the quality of legal services by maintaining and enhancing the professional standards of California lawyers through a broad array of activities, such as recommending new and amended ethics rules and providing an ethics hotline telephone research service for attorneys.

**Lawyer Assistance Program (LAP):** Senate Bill 479 (Burton) created the LAP, substantially expanding State Bar aid to attorneys with substance abuse or mental health problems. The mission of the LAP is to enhance public protection, maintain the integrity of the legal profession, and support recovering attorneys in their rehabilitation and competent practice of law.

**Office of Certification (Certification):** Certification develops standards for certification and oversight of non-disciplinary regulatory programs relating to the practice of law and administers such programs.

**Education:** The State Bar's numerous educational activities are scattered throughout a number of offices (for example, Sections and the Cal Bar Journal). The State Bar is one of the biggest Minimum Continuing Legal Education (MCLE) providers in the state, offering hundreds of classes, seminars and workshops to attorneys annually to help them meet those requirements.

**General Fund and Membership Fees:** Most of the 2003 annual membership fee of \$390 supports the State Bar's General Fund. In 2003, General Fund expenditures totaled \$47,052,000, which included both program costs and administrative support. Of this amount, \$36,095,000 was expended directly (operating budgets which include personnel costs) on General Fund programs. Administrative support for all programs totaled \$10,957,000.

## **OFFICE OF THE CHIEF TRIAL COUNSEL**

The State Bar Board of Governors, through its Regulation, Admissions and Discipline Oversight Committee, has oversight responsibility over the State Bar's disciplinary activities. The Chief Trial Counsel, who reports directly to this Board Committee pursuant to statute, is responsible for the overall structure, goals and management of OCTC. The various disciplinary units within the Office (Intake, Investigations and Trials) screen, review, analyze, investigate and prosecute allegations of attorney misconduct.

The Intake Unit receives allegations of attorney misconduct made by the consumer. The unit also receives statutorily mandated reports about attorneys, including reports of criminal convictions, sanctions, contempt and judgments for fraud, misrepresentation and breach of fiduciary duty. The Intake Unit is generally the initial contact point through which a member of the public initiates a complaint against an attorney, or determines whether a disciplinary complaint is appropriate. The vast majority of these initial contacts are made through the office's toll-free 1-800 telephone line (1-800-843-9053). During the year 2003, 146,175 calls were received at this number.

An extensive phone tree guides callers to information to address their specific concerns or issues. Callers hear pre-recorded messages and receive answers to the most frequently asked questions. Callers can also order complaint forms without speaking directly to staff, freeing staff to respond to callers with more complex issues. The phone tree is available in both English and Spanish. The Office of the Chief Trial Counsel also has on call staff who speak Spanish, Korean, Tagalog, Russian, Hungarian, Cantonese and Mandarin for callers who need assistance in those languages. Translators can be arranged for complainants with other language needs. The Office of the Chief Trial Counsel provides these translation services at no charge to complainants to assist with spoken and written communications.

The State Bar's web site, <http://www.calbar.ca.gov>, contains extensive information on the attorney discipline system in California and provides the attorney complaint form digitally for those who wish to download it.

Experienced attorneys in the Intake Unit conduct initial evaluations of all matters entering the system. They categorize the complainants' initial allegations of misconduct into eight areas. Historically, most of the complaints allege misconduct related to performance. Resolutions for inquiries include forwarding it to another unit in OCTC for investigation and possible prosecution, closing it, or referring the complainant to another agency.

Professional investigators in the Investigations Unit receive and investigate priority cases and reportable actions forwarded from Intake. In 2003, the Investigation Unit received 3,478 new matters from the Intake unit. The Investigation Unit forwards those matters worthy of prosecution to the Trials Unit. As of December 31, 2003, the Trials Unit had 984 cases pending filing in State Bar Court.

Attorneys, the courts, financial institutions and insurance companies have a statutory duty to report certain specific information to the State Bar. In particular, (1) attorneys are charged with reporting, among other things, lawsuits filed against them, criminal convictions, and professional misconduct in another jurisdiction; (2) financial institutions report insufficient funds activity involving an attorney client trust account; (3) insurance companies report malpractice claims and filings and awards; and (4) courts report judicial sanctions over \$1,000, except for failure to make discovery.

If a member is charged with a felony or misdemeanor, the prosecuting agency or the clerk of the court will generally advise the State Bar. OCTC monitors the criminal matter to final disposition, and if a conviction occurs, OCTC evaluates for forwarding to the State Bar Court as appropriate. If the crime involves moral turpitude, or is a felony, the State Bar Court may issue an order placing the member on interim suspension or make a recommendation to the California Supreme Court that the member be summarily disbarred.

The probation monitoring function of the State Bar has been housed at different times with both the State Bar Court and with OCTC. In 2002, it was part of OCTC's Intake Unit where four deputies, under the supervision of an attorney, opened and maintained files on probationer members with conditions including: filing quarterly reports, attending Ethics and/ or Client Trust Accounting School, making restitution, and complying with Rule 955 of the Rules of Court. As appropriate, the probation monitors referred violations to the Trials Unit.

OCTC highlights in 2003 include:

- **Alternative Dispute Resolution:** In 2003, OCTC expanded its mediation program for low level misconduct cases by conducting a pilot mediation program in Los Angeles and expanding the Northern California program to additional counties. Because of its success, the Los Angeles program has been continued. OCTC is in the process of making the Los Angeles program permanent and is considering expanding it to include other Southern California Counties. The Northern California program became permanent in 2003 and is now available in San Francisco, Marin, Alameda, Contra Costa, Sacramento, Solano and San Mateo counties.
- **Drug Court Pilot Program:** The State Bar Court's drug court pilot program had its first full year of operation in 2003. A significant achievement of both OCTC and the State Bar Court, attorneys with substance abuse (or mental health issues) who are facing disciplinary charges are referred to the State Bar Court's drug court where their cases are handled with the dual objectives of public protection and rehabilitation. Specific OCTC lawyers in both Los Angeles and San Francisco have been assigned to work these cases. These lawyers have received and will continue to receive substantial training in substance abuse and mental health issues. A pilot program interactive advisory committee made up of individuals from OCTC, the State Bar Court, respondents' defense bar, a

member of the State Bar's Board of Governors and the Director of the State Bar's Lawyer Assistance Program (LAP) met on a regular basis in 2003 to discuss and work out issues within the drug court pilot program. Significant progress was made in 2003 with regard to the development of this specialized court within the State Bar Court. OCTC is committed to this effort and the success of the drug court program.

- **The Trevor Law Group Investigation and Prosecution:** During the first four months of 2003, OCTC conducted its largest investigation in State Bar history and successfully obtained the resignation of three lawyers who practiced law as the Trevor Law Group. The practices of the Trevor Law Group in connection with filing of numerous lawsuits under Business and Profession Code section 17200 brought the attention of the media, the Legislature, law enforcement and the California Attorney General and focused all eyes on OCTC, the State Bar's disciplinary system, and the unfair business practices act itself.
- **Reduction of Backlog:** A primary concern in 2003 was OCTC's reduction of investigation cases in backlog status. A case is considered to be part of the investigation backlog if the investigation of the complaint is not completed within six months of receipt or twelve months if the case is designated complex. OCTC worked hard in 2003 to reduce the number of backlog cases. Backlog cases received special attention from investigators and their supervisors and at times special teams of investigators were created to focus on backlog cases. Despite the impact of the Trevor Law Group investigation (above) on office resources and a sharp increase in the number of backlog cases that resulted by June of 2003, OCTC was able to achieve a significant reduction in the backlog number by year-end, such that number of backlog cases was not substantially higher than in previous years.
- **Staff Training:** In 2003, staff training and development was a priority. Training was provided to staff in the areas of customer service, investigation techniques, computer forensics, project management, trial and mediation skills, legal writing, business writing, leadership, management and supervisory skills, computer skills, budgeting skills, and skills relating to providing exceptional service. Staff training and development will continue to be emphasized in 2004.
- **Technology Enhancements:** State Bar's Information Technology (IT) department during 2003 making advancements in a number of areas. During the year, OCTC staff worked with IT in the areas of document management, the development of graphic user interface for the AS-400 computer system, and the implementation of programs to automatically validate and check the entry of data to the discipline database. These projects will be completed throughout 2004 and 2005.
- **Cooperation with Law Enforcement:** By statute, the State Bar is required to disclose, in confidence, to the appropriate agency responsible for criminal law

enforcement, information developed during an investigation or formal proceeding, which may subject a member of the State Bar to criminal prosecution. In 2003, OCTC further developed cooperative relationships with law enforcement where appropriate. The cooperation and exchange of this information led to a number of successful criminal investigations and prosecutions in 2003.

- Ethics School/Client Trust Accounting School: As part and parcel of conditions of probation, attorney members are required to attend a day-long course featuring the identification of and solutions to common ethical issues faced by the practitioner. The course is administered in and scheduled by the Intake Unit. Instructors are experienced prosecutors who interact with the members in discussing the forming of the attorney-client relationship, the operational details of the relationship (fees, retainer agreements, scope of employment), working the case competently, the end of the relationship and duties throughout it. A three-hour component of the course, focused on Client Trust Account concepts, is given separately. In recent years, the courses have been made available to members who have not been disciplined to assist them in avoiding the most common ethical mistakes. MCLE credit is available to attendees. During 2003, 14 courses of Ethics School and 13 courses of Client Trust Accounting School were offered. 275 members attended Ethics School, and 116 members attended Client Trust Accounting School.

The following charts detail the workload and the output of the Office of the Chief Trial Counsel for the year 2003:

<b>Complaint Intake: Basic Data</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Total phone calls received	49,662*	91,000**	109,259	110,120	110,343	116,800***
Inquiries	8,040	8,405	10,846	11,138	11,784	11,947
Inquiries/reportable actions advanced to complaint status (sent to Investigations)	1,876	2,055	4,033	3,929	4,716	3,478
Average pendency for resolved inquiries (days)	N/A	N/A	62	64	49	48
Average pendency for opened inquiries (days)	N/A	N/A	32	33	36	39
*Represents January to June 1998.						
**Average for year. Complete call records were not available through all of 1999.						
***An estimated 30,000 calls were handled by the telephone-tree.						

<b>Allegation Categories By Percent</b>						
	<b>1998*</b>	<b>1999**</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Performance	35%	34%	35%	34%	34%	38%
Duties to clients	17%	16%	15%	17%	15%	15%
Handling of funds	11%	12%	12%	12%	13%	8%
Personal behavior	10%	11%	10%	11%	13%	14%
Interference with justice	11%	10%	10%	10%	10%	12%
Fees	10%	10%	9%	10%	10%	11%
Duties to State Bar	5%	6%	6%	5%	4%	0
Professional employment	1%	1%	1%	1%	1%	1%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
*Represents data for January to July 1998.						
**Represents data for June to December 1999.						

<b>Inquiry Resolution</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Alternative Dispute Resolution	0	0	0	0	27	73
Certified court reporter	0	45	2	2	1	0
Closed with communication letter	71	111	84	62	55	20
Coding Errors	0	5	0	0	0	0
Complaining witness' failure to cooperate	40	262	310	384	392	516
Criminal conviction complaint	0	444	316	633	612	758
Death of complaining witness	0	0	1	1	0	0
Death of respondent	13	19	27	14	39	60
Debt Letter: witness fees, court reporter	3	0	44	11	9	13
Decline	0	0	0	0	0	4
Directional letter	113	1	0	1	0	1
Disbarment in separate matter	15	31	47	22	37	51
Duplicate complaint	40	135	116	100	156	119
Error	11	33	54	76	79	73
Expert witness	0	48	11	1	0	0
Family support referral	4	9	3	2	1	3
Fee Arbitration award referral	3	14	8	7	6	13
Fee Arbitration matter	235	548	585	535	481	361
Incivility program	2	0	0	0	0	0
Inquiry advanced to investigation (not reportable actions)	1608	1639	2889	3089	3656	2969
Insufficient evidence	2027	2917	3558	3773	5400	4982
Insufficient patient/client information received	98	310	143	163	148	47
Lack of jurisdiction	167	96	119	126	285	145
Lozada decision	0	5	6	5	10	7

<b>Inquiry Resolution (continued)</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Matter being monitored as a criminal conviction	2	12	5	3	0	0
Matter resolved between complaining witness and respondent	259	378	210	207	233	222
Monitored as a reportable action	11	0	2	0	0	0
No communication by respondent	0	5	0	0	0	0
No complaint articulated	113	125	77	104	131	184
No merit	352	337	596	369	191	96
Not sufficient proof	666	653	1280	1305	1396	1807
Pending investigation	0	0	0	0	0	0
Pre petition for reinstatement	0	5	13	22	10	5
Purged, complaint form not returned	98	1	0	0	0	5
Referred	1	29	17	21	5	0
Releases/Satisfaction of Judgment	0	12	2	1	1	0
Resigned charges pending	103	98	157	230	280	262
Resource Letter	0	388	310	205	131	69
Return of file letters sent	199	382	467	494	559	432
Rule of limitation closure	42	49	39	65	79	99
Substance abuse program	0	18	38	0	0	0
Termination	0	0	0	0	0	0
Third-party service provider	0	30	6	20	49	88
Unable to locate complaining witness	8	39	61	5	5	5
Warning letter to respondent	0	0	0	0	27	89
<b>TOTAL</b>	<b>6,422</b>	<b>9,245</b>	<b>11,402</b>	<b>14,056</b>	<b>14,491</b>	<b>13,578</b>

<b>Reportable Actions</b>						
<b>Reported by Banks, Courts, Insurers and Attorney Self Reports</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Banks	4260	4417	3595	2853	3229	2631
Courts	104	149	152	108	156	118
Insurers	349	900*	307	398	416	368
Attorneys-self reports	81	97	121	120	97	92
<b>TOTAL</b>	<b>4713</b>	<b>5563</b>	<b>4175</b>	<b>3479</b>	<b>3898</b>	<b>3209</b>
*Estimated						

<b>Criminal Case Tracking Activity</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Received during year	208	235	266	204	278	290
Closed during year	243	177	206	314	423	284
Pending year end	334	392	478	392	263	274
Convictions transmitted to State Bar Court	70	80	92	92	89	85

<b>Open Complaints at Year's End</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
0-6 months	6	916	1017	1328	1312	1278
7-9 months	435	372	389	306	279	185
10-12 months	658	248	224	252	138	127
13-21 months	658	478	320	330	95	214
21 months plus	318	820	263	147	119	53
Total Open	2426	2384	2213	2363	1943	1857
Open more than 6 months	2420	1918	1196	1034	631	579
"Backlog" by statutory definition	2217	1736	1340	809	401	540
Average pendency for open complaints (days)	N/A	N/A	324	232	168	182
Average pendency for closed complaints (days)	N/A	N/A	268	268	210	202

<b>Office of the Chief Trial Counsel Dispositions</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Warning Letter	423	21	0	0	69	1
Directional Letter	206	6	0	0	0	172
Resource Letter	0	413	401	117	98	19
Agreement in Lieu of Discipline	82	19	35	76	39	36
Dismissal	2861	2355	2252	2216	2867	2205
Termination	523	340	482	522	587	563
Resignation tendered with charges pending	51	68	93	102	88	86
Stipulated discipline filed	44	36	221	137	146	154
Notice of Disciplinary Charges filed	248	174	383	309	402	298*

\*Contains 456 complaints.

<b>Other Litigation Matters - Received</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Probation revocation matters	61	174	129	104	74	61
Rule 9-101 violation matters	35	56	26	48	29	18
B & P Code Section 6049.1 matters	17	11	39	31	23	18
Moral character matters	4	8	6	9	7	8
Rule 955 violation matters	55	58	97	76	75	65
Reinstatement matters	16	12	17	12	16	21
B & P Code Section 6007(b)(1) matters	0	0	0	1	0	1
B & P Code Section 6007(b)(2) matters	2	0	3	0	6	4
B & P Code Section 6007(b)(3) matters	5	10	3	13	3	3
B & P Code Section 6007(b)(2) & (3) -reactive matters	3	3	1	1	2	5
B & P Code Section 6007(c) matters	1	11	7	8	23	16
Standard 1.4(c)(ii) matters	12	10	6	9	13	13
TOTAL	211	353	334	312	271	233

## **STATE BAR COURT**

The State Bar Court serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys. It is the mission of the State Bar Court to hear and decide cases fairly, correctly and efficiently for the protection of the public, the courts and the legal profession. In 2003, the State Bar Court started its 15<sup>th</sup> year at the nation's first (and only) full-time attorney disciplinary and regulatory court.

The State Bar Court has authority to impose public and private reprovations upon California attorneys who are found to have violated the disciplinary provisions of the California State Bar Act or the Rules of Professional Conduct approved by the California Supreme Court. In cases involving the imposition of more serious degrees of discipline, such as disbarment or suspension, the State Bar Court makes findings of fact, conclusions of law and a recommendation for discipline that is transmitted to the California Supreme Court for review and adoption. In the vast majority of cases, the Supreme Court accepts and imposes the State Bar Court's recommendation. However, the Supreme Court may, in its discretion, modify the State Bar Court's factual findings, legal conclusions or recommended discipline or, in the alternative, return the matter to the State Bar Court for further hearing or other action.

The State Bar Court has two venues (San Francisco and Los Angeles) and is composed of two departments—the Hearing Department and the Review Department. The Hearing Department is the trial level of the State Bar Court and is comprised of five full-time judges (three in Los Angeles and two in San Francisco). Two of the hearing judges are appointed by the Supreme Court. The Governor, Speaker of the Assembly and the Senate Committee on Rules each appoint one hearing judge.

The Review Department is the appellate level of the State Bar Court. The three-member Review Department consists of the Presiding Judge and two review judges. All of the judges of the Review Department are appointed by the Supreme Court.

Two new Los Angeles-based hearing judges took office on January 2, 2003. The Honorable Richard A. Honn was appointed to the State Bar Court by the California Supreme Court. The Honorable Alban I. Niles was appointed to the State Bar Court by the Honorable Herb J. Wesson, Speaker of the Assembly. Late in 2003, Judge Niles announced his retirement from the State Bar Court, which took effect on February 9, 2004.

The number of new cases filed in 2003 decreased significantly from 2002. In 2003, there were 821 matters filed in the State Bar Court. This represents a 13% decrease from filings in 2002 (945). The number of matters disposed by the State Bar Court and the Supreme Court remained fairly flat in 2003. Because the State Bar Court re-categorized two disposition categories (i.e. extend time to take and pass professional responsibility examination and modify stipulation) from final to interim dispositions, the total final dispositions appeared to have decreased significantly for 2003. However,

when the current 2003 figure is compared with an adjusted figure for 2002 (accounting for the re-categorized dispositions), the final dispositions actually show a decrease of less than 0.3% (800 in 2002 to 798 in 2003).

The State Bar Court's Pilot Program for Respondents with Mental Health and Substance Abuse Issues saw greatly increased participation in 2003. The State Bar Court developed a three-level system for identifying Respondents' participation in the program. This three-level system helps the court staff identify where particular Respondents are in the process of being admitted into the Pilot Program. The three levels are: Referral (when an attorney is referred to the program, Evaluation (when the responded is in the process of being evaluated by the Lawyer Assistance Program) and full Participation (once the Respondent's treatment program has been designed and he/she agrees in writing to comply with the requirements of LAP and the Pilot Program).

At the beginning of 2003, 36 Respondents were involved in the Pilot Program at the various levels, but only 1 Respondent was designated as a full Participant. By the end of the year, these figures increased significantly. At the end 2003, there were 63 Respondents involved in the Pilot Program at some level with 25 attorneys full participating in the program.

During 2003, the State Bar Court achieved the following key goals and objectives:

- Conducted judicial training for two new Hearing Departments judges in Los Angeles;
- Initiated a court performance standards project. Based on standards developed by the National Center for State Courts, this project is expected to be completed by the fall of 2004;
- Maintained the average pendency of cases in the State Bar Court Hearing Department at less than six months;
- Continued publication of the California State Bar Court Reporter containing the published opinions of the State Bar Court Review Department in attorney disciplinary and regulatory proceedings.

The following charts reflect the numbers of cases filed in the State Bar Court during 2003, as compared to previous years, along with all interim and final dispositions issued by the State Bar Court and the California Supreme Court during 2003:

<b>CASES FILED IN THE STATE BAR COURT</b>						
<b>Disciplinary Matters</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Original matters	298	245	547	534	556	456
Conviction referral	73	83	96	94	89	90
Rule 955 violation	31	53	53	59	65	46
Rule 1-110 violation (former Rule 9-101)	11	44	17	16	17	18
Probation Revocation	8	34	30	28	22	37
Other Jurisdiction 6049.1	11	9	19	14	23	17
<b>Subtotals</b>	<b>432</b>	<b>468</b>	<b>762</b>	<b>745</b>	<b>772</b>	<b>664</b>
<b>Regulatory Matters</b>						
Arbitration Enforcement	2	0	4	18	19	12
Resignation with charges pending	52	69	91	101	88	77
Trust re practice	0	0	0	0	0	0
Inactive enrollment 6007(c)	2	7	7	7	13	6
Inactive enrollment 6007(b)	0	0	0	1	0	0
Inactive enrollment 6007(b)1	0	0	0	0	0	1
Inactive enrollment 6007(b)2	2	0	3	0	5	5
Inactive enrollment 6007(b)3	4	8	5	12	2	5
Interim remedies 6007(h)	0	0	0	0	2	2
Reactive 6007(b)1	0	1	0	0	0	0
Reactive 6007(b)2	2	2	0	1	0	1
Reactive 6007(b)3	1	1	1	0	2	2
Reactive 6007(c)	1	0	0	0	0	0
Reactive Arbitration Enforcement	1	0	0	2	3	3
Standard 1.4(c)(ii)	12	10	6	9	14	13
Reinstatement	16	12	17	12	17	21
Moral Character	4	8	6	9	8	8
Lawyer Referral Service	0	1	0	0	0	0
Legal Specialization	0	0	1	0	0	1
<b>Subtotals</b>	<b>99</b>	<b>119</b>	<b>141</b>	<b>172</b>	<b>173</b>	<b>157</b>
<b>Total Cases Filed</b>	<b>531</b>	<b>587</b>	<b>903</b>	<b>917</b>	<b>945</b>	<b>821</b>

<b>STATE BAR COURT INTERIM DISPOSITIONS</b>						
<b>Disciplinary Matters</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Augment to include discipline	33	14	17	13	18	19
Conviction referral	57	51	73	74	72	60
Finding of Moral Turpitude	0	1	0	0	0	0
Grant stay of interim suspension	1	3	0	0	0	0
Grant stay of suspension	0	6	0	3	0	2
Grant temporary stay of interim suspension	1	2	1	0	3	2
Grant temporary stay of suspension	2	5	18	4	14	7
Interim Suspension	32	39	45	35	26	30
Interim Suspension and Referral	2	5	5	4	8	7
Extend time to pass professional responsibility examination*	0	0	0	0	0	30
Extend Condition of Reproval	0	0	0	0	0	1
Extent Probation	0	0	0	0	0	1
Suspension/failure to pass professional responsibility examination	30	70	40	42	44	26
Modify order	0	0	0	0	0	1
Modify Probation	0	0	0	0	0	2
Modify Stipulation*	0	0	0	0	0	82
Moral turpitude not found	0	0	0	0	0	0
Remand for hearing	0	0	1	0	1	0
Terminate Interim Suspension*	1	0	0	0	5	5
Terminate Suspension	0	0	0	0	0	21
Transmit Final	0	0	0	0	0	0
Re-transfer to active pursuant to 6007(c)*	0	0	0	0	1	0
Re-transfer to active pursuant to 6007(e)*	0	0	0	0	16	15
Rejected Stipulation	0	0	0	0	36	22
Transfer to Inactive pursuant to 6007(c)*	0	0	0	0	64	57
Transfer to Inactive pursuant to 6007(d)*	0	0	0	0	11	11
Transfer to Inactive pursuant to 6007(e)*	0	0	0	0	135	113
Restrict Practice 6007(h)	0	0	0	0	0	1
Reversal of Order	0	0	0	0	0	1
Vacate previous order	0	0	0	0	0	5
<b>Subtotals</b>	<b>159</b>	<b>196</b>	<b>200</b>	<b>175</b>	<b>454</b>	<b>521</b>
<b>Regulatory Matters</b>						
Restrict Practice 6007(h)	0	3	3	3	5	0
Transfer Inactive 6007(d)*	0	4	15	5	0	0
Transfer Inactive 6007(e)*	121	104	137	131	0	0
<b>Subtotals</b>	<b>121</b>	<b>111</b>	<b>155</b>	<b>139</b>	<b>5</b>	<b>0</b>
<b>TOTALS</b>	<b>280</b>	<b>307</b>	<b>355</b>	<b>314</b>	<b>459</b>	<b>521</b>

\* These items have been re-categorized as Interim Dispositions

<b>STATE BAR COURT FINAL DISPOSITIONS</b>						
<b>Disciplinary Dispositions</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Admonition	0	0	0	0	0	1
Deny other petitions	6	0	0	0	0	2
Dismissal	120	83	45	42	35	44
Extend condition of reproof	1	0	0	0	0	0
Extend probation	0	1	3	4	2	0
Extend time to pass professional responsibility examination*	14	46	18	31	26	0
Extension to comply with Rule 955	1	0	0	0	0	0
Grant temporary stay of suspension	8	0	0	0	0	0
Modify order	33	9	28	17	3	0
Modify decision	20	0	0	2	0	0
Modify opinion	0	0	0	0	0	0
Modify probation	5	11	1	1	4	0
Modify stipulation*	63	20	31	57	65	0
Private reproof	2	0	4	0	0	3
Private reproof with conditions	77	31	70	122	62	66
Public reproof	0	1	1	0	0	2
Public reproof with conditions	33	20	43	50	44	59
Set aside dismissal	1	1	0	0	0	0
Terminate conviction proceeding	1	1	0	0	0	0
Terminate interim suspension*	9	6	3	4	0	0
Termination - death	0	1	6	6	4	10
Termination - disbarment	1	4	0	3	19	14
Termination - resignation	54	55	67	113	77	80
Vacate previous order	41	9	15	5	6	0
Withdrawn	0	1	0	0	0	1
<b>Subtotals</b>	<b>490</b>	<b>300</b>	<b>335</b>	<b>457</b>	<b>347</b>	<b>282</b>

\* These items have been re-categorized as Interim Dispositions

STATE BAR COURT FINAL DISPOSITONS						
Regulatory Dispositions						
	1998	1999	2000	2001	2002	2003
Decline retransfer 1.4 (c)(ii)	0	0	1	0	1	2
Decline transfer 6007(b)	1	1	0	0	0	0
Decline transfer 6007(c)	0	2	0	0	2	1
Decline transfer Arbitration Enforcement	0	0	0	0	1	2
Deny admission	4	2	1	2	1	4
Deny petition/application	0	2	0	0	4	0
Deny reinstatement	2	3	4	5	3	3
Dismissal	3	8	6	7	9	7
Grant admission	2	0	1	0	3	1
Grant trust fund	0	1	0	0	0	0
Modify Decision	0	0	0	2	0	0
Modify Stipulation	0	0	0	1	0	0
Modify order	0	3	1	0	2	0
Restrict practice - 6007(h)	0	0	0	0	0	2
Retransfer active-Arbitration Enforcement	1	0	0	2	2	4
Relief from Actual Suspension -- 1.4(c)(ii)	7	12	6	6	5	12
Retransfer active 6007(b)	3	4	0	2	2	2
Retransfer active 6007(c)	1	0	2	0	0	0
Retransfer active 6007(d)	0	0	0	1	0	0
Retransfer active 6007(e)*	21	5	19	27	0	0
Termination-death	0	1	0	1	1	1
Termination-resignation	0	0	0	0	4	2
Transfer inactive-Arbitration Enforcement	2	0	2	9	14	10
Transfer inactive 6007(b)	6	3	8	9	5	9
Transfer inactive 6007(c)*	47	52	85	50	9	4
Transfer inactive 6007(d)	9	0	0	0	0	0
	0	1	0	0	0	0
Withdrawn	3	2	5	6	18	11
<b>Subtotals</b>	<b>112</b>	<b>102</b>	<b>141</b>	<b>130</b>	<b>86</b>	<b>77</b>
<b>TOTALS</b>	<b>602</b>	<b>402</b>	<b>441</b>	<b>587</b>	<b>433</b>	<b>359</b>

\*Effective 2002, some entries of this type have been re-categorized as Interim Disciplinary Dispositions

<b>CALIFORNIA SUPREME COURT INTERIM DISPOSITIONS</b>						
<b>Disciplinary Dispositions</b>						
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Grant writ of review	0	2	0	0	0	0
Remand for Hearing	2	0	4	1	0	0
Extend Probation	0	0	0	0	0	2
Modify Probation	0	0	0	0	0	3
Modify Order	0	0	0	0	0	1
Vacate Previous Order	0	0	0	0	0	1
<b>Subtotals</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>7</b>
<b>Regulatory Dispositions</b>						
Granted writ of review	0	0	0	0	0	0
Remand for Hearing	0	0	0	0	0	0
Modify Order	0	0	0	0	0	1
<b>Subtotals</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>TOTALS</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>8</b>

**CALIFORNIA SUPREME COURT FINAL DISPOSITIONS**

**Disciplinary Dispositions**

	1998	1999	2000	2001	2002	2003
Deny petition for review, rehearing, reconsideration	8	0	0	0	0	0
Disbarment	96	38	79	47	59	63
Summary Disbarment	4	2	3	8	2	3
Dismissal	0	1	8	1	1	2
Early Termination of Probation	0	0	0	3	0	0
Extend probation	6	1	3	3	6	1
Granted writ of Review	1	0	0	0	0	0
Modify order	0	2	0	0	1	0
Modify probation	0	4	0	0	0	0
Probation - no actual suspension	2	1	0	0	0	0
Resignation with charges pending*	54	67	89	100	86	--
Revoke probation/actual suspension	13	7	14	13	10	7
Revoke probation/Stayed/Actual suspension	0	0	0	1	2	4
Suspension actual with probation	6	3	8	7	8	6
Suspension actual (without probation)	3	6	3	3	28	0
Suspension stayed/some actual suspension with probation	350	120	212	272	190	163
Suspension stayed/some actual suspension with no probation	0	0	0	4	0	39
Suspension stayed with conditions	2	2	1	3	0	4
Suspension stayed with probation	125	28	84	84	59	54
Suspension with conditions	1	5	17	13	1	2
Termination - death	0	2	0	1	2	0
Termination - disbarment	0	0	0	3	0	0
Termination - resignation	0	0	0	0	0	1
Vacate Previous Order	0	2	0	3	0	0
<b>Subtotals</b>	<b>671</b>	<b>291</b>	<b>521</b>	<b>569</b>	<b>455</b>	<b>349</b>
<b>Regulatory Dispositions</b>						
Grant reinstatement	5	6	5	6	2	8
Granted writ of Review	1	0	0	0	0	0
Termination-Disbarment	0	0	0	0	0	1
License to Practice Cancelled	0	0	0	1	1	0
Resignation with charges pending*	54	67	89	100	86	81
<b>Subtotals</b>	<b>6</b>	<b>6</b>	<b>5</b>	<b>7</b>	<b>3</b>	<b>90</b>
<b>TOTALS</b>	<b>677</b>	<b>297</b>	<b>526</b>	<b>576</b>	<b>458</b>	<b>439</b>

\*Re-categorized as regulatory matters

## THE CLIENT SECURITY FUND

In 1972, the Client Security Fund was established by State Bar-sponsored legislation in recognition that disciplinary measures, as well as civil and criminal proceedings, were often insufficient remedies to alleviate pecuniary losses caused by a lawyer's dishonest conduct in the practice of law. Thus, the Client Security Fund is designed as a remedy for legal consumers, in addition to, but separate from discipline. While the discipline system protects the public by disciplining and removing errant lawyers from the practice of law, the fund protects the public by focusing on individual victims. Since its inception, the fund has reimbursed applicants approximately \$62.4 million. In 2003, the fund paid \$5,859,620 on 701 awards.

Financed by a \$35 annual assessment added to the membership dues paid by California lawyers, the Client Security Fund reimburses victims up to \$50,000 for losses due to attorney theft. While the number of dishonest lawyers is extremely low, the losses suffered by clients can be devastating. The fund is a cost-effective way of providing reimbursement to victims that is generally not available from any other source. Furthermore, the fund provides the legal profession with a unique opportunity to promote public confidence in the administration of justice and the integrity of the legal profession.

The State Bar's authority to operate the Client Security Fund is found under section 6140.5 of the Business and Professions Code. Section 6140.5(a) requires the Board of Governors to maintain a Client Security Fund. The fund is currently governed by the Rules of Procedure, Client Security Fund Matters, adopted by the Board on December 21, 1985. Under these Rules, a seven-member Commission, appointed by the Board, acts as the Board's delegate in administering the fund. The rules set forth the scope and purpose of the fund, the authority of the Commission, the requirements for reimbursement, the application process, the confidentiality of fund records and judicial review of Commission decisions. An Applicant or Respondent lawyer may seek judicial review of a Final Decision of the Commission in the superior courts of the State under section 1094.5 of the Code of Civil Procedure.

As the chart below reflects, in 2003, the Client Security Fund received 1,200 new applications and processed 1,209 cases to closure. The low filing rate for 1999 was due to the virtual shutdown of the discipline system during the fee bill crisis (i.e., June 1998 through March 1999).

<b>Client Security Fund</b>					
	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Applications Filed	611	1049	1114	1300	1200
Amounts Requested	\$6,780,932	\$10,929,128	\$11,900,739	\$14,166,217	\$12,221,905
Applications Processed	767	1095	1069	1286	1209
Applications Paid	387	595	609	782	701
<b>Amounts Paid</b>	<b>\$2,811,090</b>	<b>\$3,673,850</b>	<b>\$4,435,212</b>	<b>\$6,597,057</b>	<b>\$5,859,620</b>

## **MANDATORY FEE ARBITRATION**

Pursuant to Business & Professions Code section 6200 *et seq.*, the State Bar administers a statewide program for the arbitration of fee disputes between attorneys and their clients. In addition to processing requests for arbitration through the State Bar's own arbitration program, the Office of Mandatory Fee Arbitration is also responsible for overseeing the approximately 43 local bar association fee arbitration programs statewide. The Office provides information to all attorneys and clients concerning their respective rights and obligations under the mandatory fee arbitration program.

Further, the State Bar has exclusive jurisdiction to enforce arbitration awards requested by clients after an award for a refund of fees has become binding and final. Business & Professions Code section 6203, subdivision (d) authorizes the assessment of administrative penalties and the involuntary inactive enrollment of attorneys who fail to respond to the enforcement request. The Office of Mandatory Fee Arbitration processes clients' requests for enforcement resulting from fee arbitrations throughout the state. Both the State Bar arbitration and enforcement cases rely on a volunteer Presiding Arbitrator for procedural rulings as set forth in the rules of procedure.

The Office handles all telephonic and written requests for information concerning fee arbitration and makes appropriate outside referrals, administers the State Bar's fee arbitration program, processes requests for enforcement of awards, filing motions in the State Bar Court for inactive enrollment of attorneys as appropriate.

The Office also staffs and coordinates the activities of the State Bar Standing Committee on Mandatory Fee Arbitration. The Committee consists of approximately 16 lawyer and public members, including the State Bar Presiding Arbitrator. It reports to the Board Committee on Regulation, Admission and Discipline. The Committee meets about eight times annually.

The Committee is responsible for reviewing case law and proposing new legislation affecting fee arbitration, providing policy guidance and assistance to the local bar programs, conducting training programs for fee arbitrators throughout the state, issuing written training materials for arbitrators and arbitration advisories, and presenting legal education courses on selected topics concerning attorney's fees and the fee arbitration program. All local and State Bar fee arbitration programs must obtain Board approval of its rules of procedures and any amendments made thereto.

## **KEY ACCOMPLISHMENTS OF THE COMMITTEE ON MANDATORY FEE ARBITRATION IN 2003:**

**Arbitrator Training Programs:** During the course of the committee year, the Committee organized and presented a total of eight (8) three- hour fee arbitrator training programs. Free MCLE credit was offered to attorney arbitrators. A rotating panel of four Committee members present the training program. In addition, a binder of materials prepared by the Committee, featuring an arbitrator handbook and extensive case law summary and index, is distributed to the arbitrators who attend the program. One training program was offered to only lay arbitrators.

**State Bar Arbitrator Recruitment Efforts:** The State Bar Fee Arbitration panel consists of approximately 250 volunteer arbitrators, most of whom are lawyer arbitrators. As a result of ongoing efforts to recruit new arbitrators, new fee arbitrators are appointed by the State Bar Board of Governors each year.

**MCLE Programs:** The Committee presents and promotes programs for CLE credit through the local bar associations and at the State Bar Annual Meeting.

**Arbitration Advisories:** In addition to the MCLE programs, the Committee is responsible for identifying issues of administrative or legal significance in the area of fee arbitration and developing them into written advisories. The advisories are distributed to local bar program committees and administrators for dissemination to fee arbitrators. These advisories are also available to members and the public on the State Bar's website.

**Advice to Local Bar Programs:** The Committee provides advice and guidance to the 43 local bar fee arbitration programs in the state on an as-needed basis. The issues and questions presented are addressed in regularly scheduled meetings of the Committee. Most issues raised by the local programs are handled informally by the Office Director or the Presiding Arbitrator on a daily basis. The Office hosted a local bar administrators' roundtable session for fee arbitration program staff.

## **PROFESSIONAL COMPETENCE**

The State Bar's ongoing Competency-based programs to maintain and improve the quality of legal services available in California are among its most important efforts in support of public protection and the effective administration of justice.

### **Rules of Professional Conduct**

In 2003, Assembly Member Steinberg introduced Assembly Bill No. 1101 ("AB 1101") to amend the statutory the duty of confidentiality Business and Professions Code §6068(e). AB 1101 was supported by the State Bar pursuant to a resolution adopted by the Board of Governors on March 22, 2003 and was signed into law by Governor Gray Davis on October 10, 2003. As amended by AB 1101, Section 6068(e) permits, but does not require, an attorney to disclose confidential client information "to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual."

In an uncodified section, AB 1011 also directs the State Bar to form a special task force to develop an amendment to the Rules of Professional Conduct addressing ethical issues raised by a lawyer's exercise of the new permissive disclosure. As set forth in AB 1101, the issues to be addressed by the anticipated rule amendment include whether a lawyer must tell a client about the exception and whether a conflict of interest arises once a lawyer discloses information under the law and, if so, how such conflicts can be addressed. AB 1101 set July 1, 2004 as the operative date of the new confidentiality exception to allow the State Bar to develop the rule amendment. In accordance with AB 1101, the State Bar President, in consultation with the Supreme Court, appointed the special task force with meetings beginning in early 2004. The special task force includes representatives from all branches of California government, non-lawyer public members, practicing lawyers, and representatives from the State Bar's Committee on Professional Responsibility and Conduct and the State Bar's Commission for the Revision of the Rules of Professional Conduct. State Bar administration of the special task force is assigned to the Professional Competence staff.

### **The Commission for the Revision of the Rules of Professional Conduct**

In addition to the above rule amendment from the Legislature, the State Bar's Commission for the Revision of the Rules of Professional Conduct ("the Commission") continued its multi-year project to conduct a comprehensive review of the State Bar's ethics rules in light of developments over the past 10 years and current trends nationally. The specific charge of the Commission is as follows:

"The Commission is to evaluate the existing California Rules of Professional Conduct in their entirety considering developments in the

attorney professional responsibility field since the last comprehensive revision of the rules occurred in 1989 and 1992. In this regard, the commission is to consider, along with judicial and statutory developments, the Final Report and Recommendations of the ABA Ethics 2000 Commission, the American Law Institute's Restatement of the Law Third, The Law Governing Lawyers, as well as other authorities relevant to the development of professional responsibility standards. The Commission is specifically charged to also consider the work that has occurred at the local, state and national level with respect to multidisciplinary practice, multijurisdictional practice, court facilitated propria persona assistance, discrete task representation and other subjects that have a substantial impact upon the development of professional responsibility standards.

The Commission is to develop proposed amendments to the California Rules that:

1. Facilitate compliance with and enforcement of the rules by eliminating ambiguities and uncertainties in the rules;
2. Assure adequate protection to the public in light of developments that have occurred since the rules were last reviewed and amended in 1989 and 1992;
3. Promote confidence in the legal profession and the administration of justice; and
4. Eliminate and avoid unnecessary differences between California and other states, fostering the evolution of a national standard with respect to professional responsibility issues."

In 2003, the Commission conducted six day-long meetings including a two-day meeting in February and a meeting conducted at the September State Bar Annual Meeting held in Anaheim. The Commission implemented an "e-list" group e-mail notification system for interested persons to monitor the work of the Commission. The Commission also enhanced its homepage at the State Bar website to include new pages for the posting of: (1) rule amendments that have been tentatively approved; and (2) open session meeting materials. The Commission anticipates seeking Board Committee authorization to circulate proposed rule amendments once it has completed work one or more chapters of the entirety of the rules.

### **The Standing Committee on Professional Responsibility and Conduct (COPRAC)**

COPRAC's primary activity is to develop the State Bar's advisory ethics opinions. COPRAC also assists the Board of Governors by studying and providing comment on the Rules of Professional Conduct and other laws governing the conduct of attorneys. In 2003, COPRAC's Advisor (its immediate past chair), Prof. Kevin Mohr, was appointed to serve as the chair of the AB 1101 special task force (see above discussion).

In 2003, COPRAC continued to monitor, and participate in, important state and national studies of professional responsibility, including: (1) the development of “Family Law Limited Scope Representation Risk Management Materials” prepared by the Limited Representation Committee of the California Access to Justice Commission; (2) the ABA’s adoption of proposed amendments to the ABA Model Rules of Professional Conduct presented in the March 31, 2003 Final Report and Recommendations of the ABA Task Force on Corporate Responsibility; and (3) submission of a written comment to the Securities and Exchange Commission on a proposed “noisy withdrawal” attorney conduct regulation developed by the Securities and Exchange Commission pursuant to Section 307 of the Sarbanes-Oxley Act passed by Congress in 2002.

## **Ethics Opinions**

COPRAC’s formal ethics opinions guide members in maintaining their ethical standards. The non-binding opinions are developed in response to questions posed by bar groups or individuals members. In 2003, COPRAC worked on the following opinions:

### **Opinions Published in 2003**

#### Formal Opinion No. 2003-161

**ISSUE:** Under what circumstances may a communication in a non-office setting by a person seeking legal services or advice from an attorney be entitled to protection as confidential client information when the attorney accepts no engagement, expresses no agreement as to confidentiality, and assumes no responsibility over any matter?

**DIGEST:** A person’s communication made to an attorney in a non-office setting may result in the attorney’s obligation to preserve the confidentiality of the communication (1) if an attorney-client relationship is created by the contact or (2) even if no attorney-client relationship is formed, the attorney’s words or actions induce in the speaker a reasonable belief that the speaker is consulting the attorney, in confidence, in his professional capacity to retain the attorney or to obtain legal services or advice.

An attorney-client relationship, together with all the attendant duties a lawyer owes a client, including the duty of confidentiality, may be created by contract, either express or implied. In the case of an implied contract, the key inquiry is whether the speaker’s belief that such a relationship was formed has been reasonably induced by the representations or conduct of the attorney. Factors to be considered in making a determination that such a relationship was formed include: whether the attorney volunteered his services to the speaker; whether the attorney agreed to investigate a matter

and provide legal advice to the speaker about the matter's possible merits; whether the attorney previously represented the speaker; whether the speaker sought legal advice and the attorney provided that advice; whether the setting is confidential; and whether the speaker paid fees or other consideration to the attorney.

Even if no attorney-client relationship is created, an attorney is obligated to treat a communication as confidential if the speaker was seeking representation or legal advice and the totality of the circumstances, particularly the representations and conduct of the attorney, reasonably induces in the speaker the belief that the attorney is willing to be consulted by the speaker for the purpose of retaining the attorney or securing legal services or advice in his professional capacity, and the speaker has provided confidential information to the attorney in confidence.

Whether the attorney's representations or conduct evidence a willingness to participate in a consultation is examined from the viewpoint of the reasonable expectations of the speaker. The factual circumstances relevant to the existence of a consultation include: whether the parties meet by pre-arrangement or by chance; the prior relationship, if any, of the parties; whether the communications between the parties took place in a public or private place; the presence or absence of third parties; the duration of the communication; and, most important, the demeanor of the parties, particularly any conduct of the attorney encouraging or discouraging the communication and conduct of either party suggesting an understanding that the communication is or is not confidential.

The obligation of confidentiality that arises from such a consultation prohibits the attorney from using or disclosing the confidential or secret information imparted, except with the consent of or for the benefit of the speaker. The attorney's obligation of confidentiality may also bar the attorney from accepting or continuing another representation without the speaker's consent. Unless the circumstances support a finding of a mutual willingness to such a consultation; however, no protection attaches to the communication and the attorney may reveal and use the information without restriction.

Formal Opinion No. 2003-162

- ISSUE: What ethical issues are raised when a California attorney publicly advocates civil disobedience, including violations of law, in furtherance of her personally-held political, moral, or religious beliefs, and simultaneously practices law?
- DIGEST: While attorneys have rights under the First Amendment to express political, moral, and religious beliefs and to advocate civil disobedience, attorneys must follow their professional responsibility when acting upon their beliefs and when advising clients. At a minimum, attorneys' performance of their professional duties to clients must not be adversely affected by the attorneys' personal beliefs or exercise of First Amendment rights. In selecting areas of legal practice, types of cases and particular clients, attorneys should be cognizant of the possibility that their moral, social, and religious beliefs, and their exercise of their First Amendment rights, could adversely affect the performance of their duties to clients.

Formal Opinion No. 2003-163

- ISSUE: What are the duties of a lawyer who represents a corporation as its outside counsel, and who also simultaneously represents an officer of that corporation individually, when the lawyer receives information that creates a conflict between the lawyer's duties to the two clients?
- DIGEST: When an outside lawyer represents a corporation and also simultaneously represents a corporate constituent in an unrelated personal matter, information which the lawyer learns from the constituent or as a result of representing the constituent is a client secret of the constituent if the constituent asks the lawyer to keep the information confidential or if the information is embarrassing or detrimental to the constituent. The lawyer may not provide advice to the corporation on a matter, which is adverse to the constituent, and substantially related to the lawyer's work for the constituent, without the constituent's consent.

Even if the lawyer owes no duty of confidentiality to the constituent, the lawyer owes a duty of undivided loyalty to the constituent while the constituent is a current client. That duty prevents the lawyer from advising the corporation adversely to the officer, without the officer's consent, while the officer is the lawyer's current client.

If the lawyer's duty of competent representation of the corporation requires the lawyer to provide advice to the corporation adverse to

the constituent, then the lawyer must withdraw if providing such advice to the corporation would violate the lawyer's duties to the constituent. The lawyer is not required to withdraw as to any other matter. The lawyer must withdraw in a manner that does not violate her duties to the corporation or to the officer.

Formal Opinion No. 2003-164

**ISSUE:** May an attorney-client relationship be formed with an attorney who answers specific legal questions posed by persons with whom the attorney has not previously established an attorney-client relationship on a radio call-in show or other similar format?

**DIGEST:** The context of a radio call-in show or other similar format is unlikely to support a reasonable belief by the caller that the attorney fielding questions is agreeing implicitly to act as the caller's attorney or to assume any of the duties that flow from an attorney-client relationship.

**Opinions Circulated for 90-Day Public Comment Period**

Proposed Interim Opinion No. 02-0002 (Comment Period deadline: December 29, 2003)

**ISSUE:** Does an attorney's communication with a prospective fee paying client in a mass disaster victims Internet chat room violate California Rule of Professional Conduct 1-400?

**DIGEST:** While an attorney's communication with a prospective fee paying client in the mass disaster victims Internet chat room described here in is not a prohibited "solicitation" within the meaning of subdivision (B) of rule 1-400, it violates subdivision (D)(5) of rule 1-400, which bans transmittal of communications that intrude or cause duress. Attorney's communication would also be a presumed violation of Standard (3) to rule 1-400, which presumes improper any communication delivered to a prospective client whom the attorney knows may not have the requisite emotional or mental state to make a reasonable judgment about retaining counsel.

Proposed Interim Opinion No. 02-0004 (Comment Period deadline: December 29, 2003)

**ISSUE:** Is it professional misconduct for an attorney to use a firm trade name, which may be mistaken for a governmental entity, or to use a current or former governmental title in promoting the attorney's law practice?

**DIGEST:** An attorney may not use a firm trade name that implies, or has a tendency to confuse or mislead the public into believing that the firm is connected to a governmental agency. An attorney may accurately describe a current or former governmental office held by the attorney in a firm resume or brochure, but may not use the title in the firm name or letterhead. Listing a governmental title on law firm letterheads misleadingly implies a direct connection between the firm and the public office held.

**Ethics Hotline**

The State Bar’s toll-free statewide confidential service (1-800-2-ETHICS) provides California attorneys with information and research assistance on ethical questions. In 2002, Ethics Hotline staff answered 22,569 calls and distributed 824 packets of local bar association and State Bar ethics opinions to interested persons. The chart provided below identifies the types of ethical issues most frequently raised by the Ethics Hotline inquirers in the year 2003.

<b>2003 Percentage of Frequently Named Ethics Issues</b>	
<b>Primary Ethics Issues</b>	<b>Percentage</b>
Fees and costs for legal services	20.3%
Conflicts of interest	16.6%
Misconduct/Moral Turpitude/Trial Conduct	12.6%
Attorney advertising and solicitation	8.3%
Communications with clients, adverse party and others	7.6%
Unauthorized practice of law	6.7%
Withdrawal from Employment/Termination	6.7%
Client Confidential Information	6.7%
Clients files	6.4%
Other	3.0%

**Publications**

**California Compendium on Professional Responsibility (Compendium).** The State Bar publishes the Compendium, a compilation of local, state and national ethics information. It is updated annually. In 2003, 149 Compendiums updates and new subscriptions were sold.

**California Rules of Professional Conduct and State Bar Act (Publication 250).**

Publication 250 is a convenient resource book which includes: The California Rules of Professional Conduct (past and present); the State Bar Act; California Rules of Court related to the State Bar and members of the State Bar; various statutes relating to discipline and attorneys and the duties of members of the State Bar; the Minimum Continuing Legal Education Rules and Regulations; and the Rules and Regulations Pertaining to Lawyer Referral Services (Including Minimum Standards for a Lawyer Referral Service in California). In 2003, approximately 2,900 copies of Publication 250 were sold.

**Handbook on Client Trust Accounting for California Attorneys ("Handbook").**

The Handbook is a practical guide created to assist attorneys in complying with the record keeping standards for client trust accounts which went into effect on January 1, 1993. The Handbook includes: a copy of the standards and statutes relating to an attorney's trust accounting requirements; a step-by-step description of how to maintain a client trust account; and sample forms. In 2003, a revised edition of the Handbook was published both in hard copy format and as a new full-text online electronic document available for free download from the State Bar website. A recent report showed that the electronic Handbook had been opened and/or downloaded 10,000 times since its initial posting in November 2003. In 2003, 655 copies of the former and revised hardcopy editions of the Handbook were sold.

**Ethics School Program Videotape.** This video program was produced in 1994 and was designed to offer the highlights of the State Bar's Ethics School Program touching on the following four topics: formation of the attorney/client relationship; withdrawal from employment; client trust accounting; and reportable actions. The program is approved for one hour of MCLE credit in legal ethics.

**Lawyer Personal Assistance Program.** In 2003, the services offered by the Lawyer Personal Assistance Program, including, providing members with education, confidential counseling and referrals about chemical dependency and emotional distress, were substantially transferred to the new legislatively mandated Lawyers Assistance Program described more fully below.

**Special Projects**Annual Statewide Ethics Symposium

On June 28, 2003, COPRAC held a Statewide Ethics Symposium at Whittier Law School in Costa Mesa. The event brought together experts from all aspects of the professional responsibility field including: ethics professors, judges, ethics consultants, State Bar staff, local ethics committee leaders, expert witnesses, and representatives of the defense bar. The symposium's scheduled topics, which were presented by a diverse group of expert panelists, featured: "Privilege and Confidentiality in the Federal Arena—Recent Developments and Policy Considerations"; "Criminal Practice Breakout—Trying Your Case to the Press"; "Civil Practice Breakout—Special Ethics Issues in Alternative

Dispute Resolution: An Ethics Roadmap”; “Advanced Topics on Conflicts of Interest and other Ethics Issues in Class Action/Mass Tort Litigation”; and “Special Issues in Family Law, Elder Law and Estate Planning”. Each of the panels included interactive sessions providing a unique opportunity for high-level discussion with the dialogue ranging from humorous to heated. In addition to the panels, 2003 State Bar President, James Herman, provided a keynote address.

### Annual Meeting Programs

In September 2003, the Office of Professional Competence administered five ethics and/or competence related educational programs at the State Bar's Annual Meeting in Anaheim. The topics covered were: “Recent Significant Developments Affecting the Law of Lawyers”; “Methods for Identifying and Avoiding Conflicts”; “How to Collect Your Fee and Avoid a State Bar Complaint”; “Hollywood Lawyers: a Real Look at Justice”(co-sponsored with the American Inns of Court); and “Recent Developments in Attorney-Client Confidentiality.”

### Local and Specialty Bar Association Outreach Programs

In cooperation with local and specialty bar associations, staff conducted outreach ethics programs throughout the year 2003 at various locations. Program topics ranged from recent developments in ethics to special ethics issues in immigration law, and were selected by working closely with bar leaders familiar with the kinds of issues relevant for the particular local or specialty audience. The groups who received presentations included: the Bar Association of San Francisco; the American Immigration Lawyers Association; and the California Small Claims Court Advisors Association. In addition, Professional Competence staff participated in the State Bar’s first CLE Tele-Seminar that was initiated in January of 2003.

### Competence Resources on the State Bar Website

In 2003, much work was accomplished in the posting of ethics and competence related resources on the State Bar's website. The following resources are now available online: 1) the revised 2003 *Handbook on Client Trust Accounting for California Attorneys*; 2) year 2003 updates to the California Rules of Professional Conduct and The State Bar Act and other provisions governing the duties of attorneys; 3) COPRAC draft opinions and rule amendments circulating for public comment; 4) COPRAC formal advisory ethics opinions; and 5) new web page posting tentatively approved draft rules from the State Bar of California Commission for the Revision of the Rules of Professional Conduct.

## **LAWYER ASSISTANCE PROGRAM**

In little more one year the State Bar has taken its new Lawyer Assistance Program from a legislative concept to a successful operational entity. The State Bar's disciplinary process has, for the time being, been relieved of some of the burden and expense of adjudicating complaints against many participants, and the clients of those participants now enjoy the protection of close supervision of their attorneys if they continue to practice.

Troubled lawyers have come to the Lawyer Assistance Program by all the paths the Legislature foresaw: by referral from the Bar's system of discipline, voluntarily at the early signs of complaint and investigation, or just by personal choice. They are carefully evaluated for 90 days but their participation in the Program begins at once, with crisis intervention, treatment referrals, group and peer support, and professional counseling if required.

The Program's Oversight Committee is composed of medical, psychiatric and substance abuse specialists, lawyers with extensive experience in recovery, and institutionally experienced public members. All the members are appointed by the President *pro tem* of the Senate, the Speaker of the Assembly, the Governor, or the Board of Governors of the State Bar.

There is no shortage of lawyers seeking help. Lawyers sought it out even before the Program's doors were opened and they have been coming in increasing numbers since. As in every other program of its kind not all the participants are successful, although the Program's experience so far suggests a very high record of accomplishment. The requirements for completion are strict, and require far more sobriety and stability than one year can measure. Every indication, however, is that the Program will fully serve the purposes the Legislature intended: protecting the public while helping rescue as many lawyers as it can from the grip of the chronic, progressive and potentially fatal diseases afflicting them.

To this end the Program has put every necessary element of its operation in place. It has published, and the Board of Governors has approved, rules and criteria that govern admission, participation, completion and withdrawal from the Program. It has organized evaluation committees statewide, and has established local professionally facilitated peer group meetings that its participants attend. It reaches out through a wide variety of media to the profession, the judiciary, and the general public.

Although independent of the State Bar's disciplinary system, the LAP closely coordinates its procedures with the Office of the Chief Trial Counsel and the State Bar Court so that early intervention and rehabilitation can take the place of discipline wherever appropriate. The Program widely promulgates advice and materials to help educate troubled lawyers before they come in contact with any formal procedure. With the active participation and support of the disciplinary system and the State Bar Court the Program continues to grow and develop.

## **OFFICE OF CERTIFICATION**

The Office of Certification (Certification) develops standards for certification and oversight of non-disciplinary regulatory programs relating to the practice of law, and administers such programs. Certification administers 11 certification programs as follows:

**1) Foreign Legal Consultants (FLC)**  
**(California Rules of Court, rule 988; State Bar Rules & Regulations)**

Attorneys licensed to practice in foreign jurisdictions who wish to practice the law of that jurisdiction in California must meet certification requirements administered by the State Bar. These include a required number of years of practice and security for claims for malpractice and dishonest conduct.

**2) Law Corporation**  
**(Business and Professions Code, section 6160 et. seq.)**  
**(State Bar Rules & Regulations)**

Attorneys who wish to practice law as a professional law corporation must be registered with the State Bar. Registration requirements include showing corporate structure, security for claims and having an approved name. The law corporations renew annually. At the end of 2003, there were over 6,200 registered law corporations.

**3) Limited Liability Partnerships (LLPs)**  
**(State Bar Rules & Regulations)**

Attorneys who wish to practice law as a limited liability partnership must register with the State Bar. Among other things, they must show their partnership structure, security for claims and have an approved name. The LLPs renew annually. At the end of 2003, there were 1,800 LLPs.

**4) Lawyer Referral Services (LRS)**  
**(Business & Professions Code, section 6155; State Bar Rules & Regulations)**

Entities that operate for the direct or indirect purpose of referring potential clients to attorneys in California must be certified by the State Bar. These may be non-profit or for-profit entities. Currently, there are over 60 certified lawyer referral services.

**(California Rules of Court, rule 983.5; State Bar Rules & Regulations)**

Attorneys may be certified to specialize in the following areas of law: appellate; criminal; estate planning, trust and probate; family; immigration and nationality; personal and small business bankruptcy law; taxation; and worker's compensation. An attorney must pass a written examination, possess special education and experience and

undergo reviews made by their peers and judges in order to be a certified specialist. Certified specialists must recertify every five years. Currently, there are over 3,800 certified legal specialists. In addition, the State Bar accredits entities who certify attorneys in the following areas: civil trial advocacy; criminal trial advocacy; family law trial advocacy; creditors rights; consumer and business bankruptcy; elder law; accounting; and legal and medical malpractice.

**5) Practical Training of Law Students (PTLS)  
(California Rules of Court, rule 983.2; State Bar Rules & Regulations)**

Law students who meet certain requirements may provide legal services under the supervision of an attorney. In 2003, the office processed approximately 1,200 PTLS certification applications.

**6) Pro Hac Vice (PHV)  
(California Rules of Court, rule 983)**

Non-California licensed attorneys who intend to appear in California courts on particular cases must file a copy of their application with the State Bar. The State Bar maintains statewide records of those applications. In 2003, approximately 2,400 pro hac vice applications were filed with the State Bar.

**7) Out of State Attorney Arbitration Counsel (OSAAC)  
(California Rules of Court, rule 983.4; State Bar Rules & Regulations)**

Non-California licensed attorneys who intend to seek permission to represent a party in an arbitration proceeding in California must serve a certificate on the State Bar. In 2003, approximately 273 such records were filed with the State Bar.

**8) Special Masters  
(State Bar Rules & Regulations; California Penal Code Section 1524)**

Attorneys who wish to serve as a special master appointed by the courts of record to search attorneys, physicians and clergy offices must apply with the State Bar. The list of attorneys who qualify for special master appointment is maintained by the State Bar. There are currently 375 qualified special masters.

**9) Minimum Continuing Legal Education (MCLE)  
(Business & Professions Code, section 6070; California Rules of Court, rule 958; State Bar Rules & Regulations)**

All active members of the State Bar, unless exempt, must meet minimum continuing education requirements every three years. During 2003, the State Bar sent MCLE compliance cards to one third of its members. At the end 2003, there were almost 1,200 approved providers.

**10) Military Counsel  
(California Rules of Court, rule 983.1)**

Non-California attorneys who serve as judge advocates must file an application with the State Bar seeking permission to represent a person in the military service in a California court.

## **EDUCATION**

The State Bar's numerous educational activities are scattered throughout a number of offices. Since the advent of continuing legal education requirements, the Bar has become one of the biggest MCLE providers in the state, offering hundreds of classes, seminars and workshops to attorneys annually to help them meet those requirements.

### **Section Education and Meeting Services**

The State Bar's 16 sections, each, dealing with a specific area of law, have a membership of almost 59,000. Although originally established as a way of expanding professional contacts and increasing expertise, the sections have evolved into education entities.

Each section produces a quarterly newsletter, which keeps section members up to date on timely developments in the field and advertises upcoming MCLE programs and other activities sponsored by the section. The newsletters frequently include lengthy articles on issues of importance to practitioners in the field.

In 2003, the sections produced numerous education seminars and programs. The vast majority of programs were individually sponsored section events and the remainder of the programs were offered at one Section Education Institute in the Winter and at the Annual Meeting in October.

Ten sections - Antitrust, Business, Environmental, Estate Planning, Labor, Litigation, Intellectual Property, International, Real Property, Taxation - held annual weekend programs offering education credit.

In addition, the Office of Section Education and Meeting Services acts as a central registry for all State Bar-sponsored continuing legal education programs, including those offered by the sections.

## GENERAL FUND AND MEMBERSHIP FEES

In 2003, the annual membership fee for active members was \$390. Members who declared that their annual income from the practice of law was less than \$40,000 were eligible for a waiver of 25 percent of the annual membership fee and if their annual income from the practice of law was less than \$25,000 they were eligible for a waiver of 50 percent of the fee.

Most of the annual membership fee supports the State Bar's General Fund. A portion of the annual membership fee is assessed for the Client Security Fund (\$35) and for the Building Fund (\$10). The annual membership fee does not support the program for admission to membership in the State Bar, which is a self-supported program. Voluntary programs are not supported by the annual membership fee; they are supported by voluntary contributions. The State Bar's General Fund provides resources to operate programs that serve both the public and the State Bar's active and inactive members. These programs include the attorney disciplinary system, administration of justice, governance, administration of the profession, program development, and communications. The charts below show the allocations of membership fees to the general and administrative costs of mandatory programs supported by the fees. In 2003, the State Bar allocated administrative costs to General Fund programs and sub-programs to better represent the true cost of these operating units. In prior years no such allocation was made and only direct program costs were reported.

<b>GENERAL FUND 2003 Actual Expenditures (Dollars in Thousands)</b>		
<b>Program</b>	<b>Amount</b>	<b>Percentage</b>
Discipline	\$37,993	80.75%
Administration of Justice	477	1.01%
Governance	4,435	9.43%
Administration of the Profession	551	1.17%
Program Development	1,056	2.24%
Communications & CBJ	2,540	5.40%
<b>TOTAL GENERAL FUND-PROGRAM EXPENSES</b>	<b>\$47,052</b>	<b>100%</b>

<b>DISCIPLINE</b>		
<b>2003 Actual Expenditures (Dollars in Thousands)</b>		
<b>Sub-Program</b>	<b>Amount</b>	<b>Percentage</b>
Office of Chief Trial Counsel	\$28,770	75.72%
State Bar Court	6,784	17.86%
Fee Arbitration Program	549	1.45%
Professional Competence	1,890	4.97%
<b>TOTAL DISCIPLINE-SUB PROGRAM</b>	<b>\$37,993</b>	<b>100.00%</b>

## **GLOSSARY**

### **Admonition**

A written non-disciplinary reprimand issued by the Office of the Chief Trial Counsel or the State Bar Court pursuant to Rule 264, Rules of Procedure of the State Bar of California.

### **Agreement in Lieu of Discipline**

An agreement between the member and the Office of the Chief Trial Counsel in lieu of disciplinary prosecution, pursuant to Business and Professions Code sections 6068(l) and 6092.5(i).

### **Backlogged complaints**

Complaints that have been pending in investigation longer than six full months from the date of receipt (12 months for complex cases) without dismissal, admonition of the member involved or the forward of a completed investigation for prosecution.

### **Client Trust Accounting School**

A four-hour program designed to provide practical information to attorneys on the proper maintenance and handling of client trust accounts.

### **Complaint**

A communication which is found to warrant an investigation of alleged misconduct of a member which, if the allegations are proven, may result in discipline of the member.

### **Complaint - Held**

A complaint for which a status of the case has been completed, reviewed and approved and which is being held pending receipt of remaining Statements of the Case [see below] on the same member.

### **Complaint - In Abeyance**

A complaint temporarily not being worked on for a specific reason, such as pending acceptance of an attorney's resignation by the Supreme Court.

### **Complaint - Open**

A complaint being worked on.

### **Conviction Referral**

A formal disciplinary proceeding following an attorney's criminal conviction commenced by a referral order from the State Bar Court Review Department directing the Hearing Department to hold a hearing, file a decision and recommend the discipline to be imposed, if any, or take other action on the issue or issues stated in the order.

### **Disbarment**

A disciplinary action that prohibits an attorney from practicing law in the state. The attorney's name is stricken from the Roll of California Attorneys.

**Dismissal**

A proceeding closed by the Office of the Chief Trial Counsel or the State Bar Court for a specific reason, such as no merit or insufficient evidence.

**Ethics School**

An eight-hour program that focuses upon general principles of professional responsibility and law practice management and is designed to educate attorneys in methods they can utilize to avoid complaints being made to the State Bar.

**Finality Rules**

California Supreme Court Rules that empower the State Bar Court to handle a number of matters - including placing convicted attorneys on interim suspension in appropriate instances - that formerly were Supreme Court responsibilities. The Rules also provide that, when a member does not request Supreme Court review after pursuing a State Bar Court appeal, the State Bar Court's recommendations are adopted by the Supreme Court as its final order unless the high court decides on its own to review the case.

**Inquiry**

A communication concerning the conduct of a member of the State Bar received by the Office of the Chief Trial Counsel which is designated for evaluation to determine if any action is warranted by the State Bar.

**Involuntary Inactive Enrollment**

The transfer of an attorney to inactive status (1) after the attorney is judged to present a substantial threat of harm to clients or the public, or (2) after the attorney is judged to be unable to practice without danger to clients or the public because of a disability, or (3) for other reasons allowed by state law. An attorney on inactive status cannot practice law.

**Notice of Disciplinary Charges**

A document filed in State Bar Court containing formal charges against a member.

**Private Reproval**

A censure or reprimand issued by the Supreme Court or the State Bar Court which is not a matter of public record unless imposed after the initiation of formal disciplinary proceedings. The reproval may be imposed with duties or conditions.

**Pro Tempore Hearing Judges**

A panel of specially trained lawyers or retired judges who serve as judges of the State Bar Court Hearing Department of a temporary, as-needed basis.

**Probation**

A status whereby an attorney retains the legal ability to practice law subject to terms, conditions and duties for a specified period of time.

**Public Reproval**

A censure or reprimand issued by the Supreme Court or the State Bar Court which is a matter of public record. The reproval may be imposed with duties or conditions.

**Reinstatement**

Readmission by the Supreme Court to the practice of law and to membership in the State Bar of a former member who resigned or was disbarred. The former member must demonstrate rehabilitation and present moral qualifications as well as ability and learning in the law.

**Request for Further Proceedings**

A request from a complaining witness after being advised that the complaint has been dismissed or the member has been admonished.

**Resignation Tendered with Charges Pending**

A written relinquishment of the right to practice law and resignation as a member of the State Bar by a member against whom disciplinary charges are pending. Supreme Court acceptance of a resignation is required to make it effective, but as soon as a member submits a resignation in proper form, the member is transferred to inactive status and cannot practice law.

**Resource Letter**

A Resource Letter may be issued where there is a probable violation or a potential for a future violation of the Rules of Professional Conduct and/or the State Bar Act, which is minimal in nature and would not lead to discipline of the member. The member is referred to various resources, which may assist the member in avoiding future problems and/or the filing of complaints against him or her in the future.

**Statement of the Case**

An investigator's written report of information and evidence submitted to an Office of the Chief Trial Counsel attorney for further action.

**Stipulation**

A agreement between the member and the Office of the Chief Trial Counsel regarding a statement of facts, conclusions and/or disposition filed by the Office of the Chief Trial Counsel in the State Bar Court.

**Suspension**

A disciplinary action that prohibits an attorney from practicing law or from holding himself or herself out as a lawyer for a period of time set by the California Supreme Court.

**Termination**

A proceeding closed due to an external cause, such as death of the member, disbarment in a separate matter or resignation with charges pending.

**Warning Letter**

A Warning Letter may be issued when there is a probable violation of the State Bar Act or the Rules of Professional Conduct, which is minimal in nature, does not involve significant harm to the client or the public and does not involve the misappropriation of client funds.